

City of Cincinnati Income Tax Rules and Regulations

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CINCINNATI MUNICIPAL CODE

Cincinnati Income Tax Division
805 Central Avenue, Suite 600
Cincinnati, OH 45202

Regulation Number & Title:

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R3. DEFINITIONS

- A. All defined terms in Chapter 311 of the Cincinnati Municipal Code have the same meaning in these Rules and Regulations.
- B. Unless otherwise indicated to the contrary, all references to “Chapter” are to Chapter 311 of the Cincinnati Municipal Code, and all references to “Section” are to sections of Chapter 311.

R5. IMPOSITION OF TAX

A. IN THE CASE OF RESIDENTS, the tax is imposed on all qualifying wages, commissions, fees, net profits from businesses, gambling winnings and other compensation earned during the effective period of Chapter 311. The source of the earnings and the place or places in or at which the services were rendered is immaterial. All such earnings wherever earned or paid are taxable. (However, see Section 311-73 allowing a resident credit for income tax paid to another municipality or county. Following are items subject to the tax imposed by Chapter 311:

- 1) **QUALIFYING WAGES.** Salaries, wages, bonuses and incentive payments earned by an individual whether directly or through an agent and whether in cash or in property for services rendered during the tax period as:
 - A) An officer, director or employee of a corporation (including charitable and other non-profit organizations), joint stock association, or joint stock company;
 - B) An employee (as distinguished from a partner or member) of a pass-through entity or any other form of unincorporated enterprise owned by two or more persons;
 - C) An employee (as distinguished from a proprietor) of a business, trade or profession conducted by an individual owner;
 - D) An officer or employee (whether elected, appointed or commissioned) of the United States government, or any of its agencies; or of the state of Ohio or any of its political subdivisions or agencies thereof; or any foreign country or dependency except as provided in Section 311-15.
 - E) An employee of any other entity or person, whether based upon hourly, daily, weekly, semi-monthly, monthly, annual, unit of production or piece work rates; and whether paid by an individual, pass-through entity, association, corporation (including charitable and other non-profit corporations), governmental administration, agency, authority, board, body, branch, bureau, department, division, subdivision, section or unit, or any other entity.
- 2) **COMMISSIONS.** Commissions earned by an individual directly or through an agent and whether in cash or in property for services rendered, regardless of how computed or by whom or wheresoever paid.
 - A) If amounts received as a drawing account exceed the commissions earned and the excess is not subject to the demand of the employer for repayment, the tax is payable on the amounts received as a drawing account.
 - B) Amounts received from an employer for expenses, and not as compensation, and used as such by the individual receiving them are not deemed to be compensation if the employer deducts such expense or advances as such from his gross income for the purpose of determining his net profits taxable under federal law, and the employee is not required to include such receipts as income on his federal tax return.

- C) If commissions are included in the net earnings of a trade, business, profession, enterprise or activity carried on by a pass-through entity, such commissions are subject to the tax imposed by Section 311-5(c)(1) and 311-5(c)(2) and any resident owner or part owner of such entity shall not be taxed again on such income under Section 311-5(a).
- 3) FEES. Fees received by a director or officer of a corporation for services performed whether reported on the IRS Form W-2 or IRS Form 1099 are taxable. Fees that are properly includible as part of the net profits of a trade, business or profession, or enterprise regularly carried on by a pass-through entity owned or partly owned by such individual and such net profits are subject to the tax under Section 311-5(c)(1) and 311-5(c)(2).
- 4) OTHER COMPENSATION.
- A) Tips, bonuses, or gifts of any type, and including compensation received by domestic servants, casual employees and other types of employees. These payments are normally reported on a Form 1099 MISC.
- B) If the income appears as part of Medicare wages on a W-2 form and is not shown to be an exception in accordance with Section 311-15 (Exceptions), it shall be considered other compensation and is therefore taxable to the individual. This includes, but is not limited to:
- i) Payments made by an employer to an employee during periods of absence from work are taxable when paid and at the tax rate in effect at the time of payment, regardless of the fact that such payments may be labeled as sick leave or sick pay, vacation pay, terminal pay, supplemental unemployment pay, etc.
 - (1) Sick pay whether paid by the employer to the employee or through a third party.
 - (2) Severance pay.
 - (3) Supplemental unemployment benefits described in Section 3402(o)(2) of the Internal Revenue Code.
 - ii) Tips, bonuses, fees, gifts in lieu of pay, gratuities.
 - iii) Strike pay; grievance pay.
 - iv) Employer paid premiums for group term life insurance to the extent taxable for federal income tax purposes.
 - v) Car allowance, personal use of employer-provided vehicle.
 - vi) Incentive payments, no matter how described, including, but not limited to, payments to induce early retirement.
 - vii) Contributions by an employee or on behalf of an employee, from gross wages, into an employee or third party trust or pension plan as permitted by any provision of the Internal Revenue Code that may be excludable from gross wages for federal income tax purposes such as 401K plans.
 - viii) Nonqualified Deferred Compensation Plans or programs described in Section 3121(v)(2)(C) of the Internal Revenue Code.
 - ix) Trust not made pursuant to employee's retirement.

- C) Where compensation is paid or received in property, its fair market value at the time of receipt shall be subject to the tax and to withholding.
 - i) Board, lodging or similar items received by an employee in lieu of additional cash compensation shall be included in earnings at their fair market value.
 - ii) Restricted stock awards that vest over a period of time are taxable at their fair market value at the time they become vested and included in Medicare wages, as shown on the employee's IRS Form W-2.
- 5) NET PROFITS.
- A) A resident individual who is sole owner of an unincorporated entity shall pay the tax on his entire share of net profits of the resident unincorporated business entity. If allocation to another municipality exists, the taxpayer may qualify for credit for tax paid to another locality under Section 311-73.
 - B) In the case of a resident owner of a pass-through entity, the tax is imposed on such individual's distributive share of the entity's net profits; the tax is not imposed on the pass-through entity.
- 6) GAMBLING WINNINGS. All prizes, awards and income derived from gaming, wagering, lotteries or schemes of chance by residents, regardless of where derived, and as reported on IRS Form W-2G, IRS Form 5754 or any other form required by the Internal Revenue Service to report such prizes, awards and income.
- 7) Losses from the operation of a business or profession are not deductible from employee earnings but may be carried forward as provided in Section 311-9.
- B. IN THE CASE OF INDIVIDUALS WHO ARE NOT RESIDENTS, the tax is imposed on all qualifying wages, commissions, fees, net profits from businesses, gambling winnings and other compensation earned during the effective period of Chapter 311 within the Municipality, whether such compensation or remuneration is received or earned directly or through an agent and whether paid in cash or in property. The location of the place from which payment is made is immaterial.
- 1) The items subject to tax under Section 311-5 are the same as those already defined and listed in this article for residents.
 - 2) See Regulation R31. A. 6) for the methods of computing the tax on that portion of qualifying wages earned within the Municipality.
 - 3) The Municipality shall not tax the compensation of an individual if all of the following apply:
 - A) The individual does not reside in the Municipality;
 - B) The compensation is paid for personal services performed by the individual in the Municipality on twelve (12) or fewer days during the calendar year;

- i) For purposes of the 12-day calculation, “Day” means any part of a 24-hour calendar day where compensation is earned in the Municipality.
 - ii) Beginning with the thirteenth (13) day, the individual shall no longer be considered an occasional entrant and is liable for taxes on income earned for the first twelve (12) days.
 - C) In the case of an individual who is an employee, the principal place of business of the individual’s employer is located outside the Municipality and the individual pays tax on compensation described in item (B) of this section to the municipality, if any, in which the employer’s principal place of business is located, and no portion of tax is refunded to the individual; and
 - D) The individual is not a professional entertainer or professional athlete, the promoter of a professional entertainment or sport event, or an employee of such a promoter.
- 4) In the case of a nonresident owner of a pass-through entity, the tax is imposed on such individual’s distributive share of the entity’s net profits attributable to the Municipality under the business apportionment percentage formula set forth in Section 311-7; the tax is not imposed on the pass-through entity.

C. IN THE CASE OF OWNERS OF UNINCORPORATED ENTITIES.

- 1) A resident who is the sole owner of an unincorporated entity shall pay the tax on his entire share of net profits of the unincorporated business entity. If allocation to another municipality exists, the taxpayer may qualify for credit for tax paid to another locality under Section 311-73.
- 2) In the case of a resident owner, partner or part owner of a pass-through entity, the tax is imposed on such individual's distributive share of the entity’s net profits.
- 3) In the case of a nonresident owner, partner or part owner of a pass-through entity, the tax is imposed on such individual's distributive share of the entity’s net profits attributable to the Municipality under the business apportionment percentage formula set forth in Section 311-7.
- 4) The Municipal income tax imposed by Section 311-5(c) on the owners of a pass-through entity shall, to the extent that the owner’s distributive share of the net profit of the pass-through entity is attributable to business conducted by the pass-through entity in the Municipality, be collected and remitted pursuant to Section 311-32.
- 5) “Distributive share” shall have the same meaning as “Owner’s proportionate share” as defined in Ohio Revised Code section 718.14(A)(5). This is the ratio of (a) the owner’s income from the pass-through entity that is subject to taxation by the Municipality, to (b) the total income from that entity of all the owners whose income from the entity is subject to taxation by the Municipality.

D. IN THE CASE OF CORPORATIONS.

- 1) Whether domestic or foreign and whether or not the corporation has an office or place of business in the Municipality, the tax is imposed on the corporation's net profits attributable to the Municipality under the business apportionment percentage formula provided for in Section 311-7.
- 2) In determining whether a corporation is conducting a business or other activity in the Municipality, the provisions of R7 of these regulations shall be applicable.
- 3) Corporations which are required by the provisions of Ohio R.C. 5727.38 to 5727.41, inclusive, to pay an excise tax in any taxable year, may exclude that part of their gross receipts upon which the excise tax is paid. In such case, expenses incurred in the production of such gross receipts shall not be deducted in computing net profits subject to the tax imposed by Chapter 311.
- 4) The tax imposed by Section 311-5(e) on the net profits of an electric company, combined company or telephone company shall be subject to, and shall accord to, Ohio Revised Code Chapter 5745.

E. IN AMPLIFICATION of the definition contained in Section 311-3N, but not in limitation thereof, the following additional information respecting net profits is furnished.

1) RENTAL OF REAL ESTATE.

- A) Real estate shall include commercial property, residential property, farm property, and any other types of real property.
- B) Business Activity. The net profit from rental activity is taxable provided the gross rents from all rental activities exceed \$500 per month.
 - i) Periods of vacancies and other causes are not to be considered.
 - ii) In the case of commercial property when the gross rents are based on a percentage of gross sales or net sales the \$500 requirement is disregarded and the owner is engaged in a business activity.
 - iii) In the case of farm rentals when the owner shares in the crops or the gross rents are based on the receipts derived from the farm the \$500 requirement is disregarded and the owner is engaged in a business activity.
 - iv) Rooming houses of five or more rooms are considered businesses activities whether or not the gross rents exceed \$500 per month.
- C) Residents of Cincinnati are subject to taxation upon the net profits from rentals regardless of the location of the property. In accordance with Section 311-73, residents may claim a credit for taxes paid to other municipalities on rental income from property located in another municipality.
- D) Nonresidents of the Municipality are subject to such taxation only if the real property is situated within the Municipality and the rental activity is deemed a business activity as defined above.
- E) Businesses owning or managing real estate are taxable only on that portion of the real estate property located in the Municipality.

R7. BUSINESS APPORTIONMENT PERCENTAGE FORMULA

The business apportionment formula must be used to determine net profits within the Municipality.

- A. STEP 1: Ascertain the percentage which the original cost of real and tangible personal property, including leasehold improvements, owned or used in the business and situated within the Municipality is of the original cost of all real and tangible personal property, including leasehold improvements, owned or used in the business wherever situated, during the period covered by the return.
- 1) The percentage of taxpayer's real and tangible personal property within the Municipality is determined by dividing the original cost of such property within the Municipality (without deduction of any encumbrances) by the original cost of all such property within and without the Municipality. In determining such percentage, property rented to the taxpayer, as well as real and tangible personal property owned by the taxpayer, must be considered.
 - A) The original cost of real and tangible personal property rented by the taxpayer shall be determined by multiplying gross annual rents by eight.
 - B) Gross rents means the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer for the use or possession of property and includes:
 - i) Any amount payable for the use or possession of real and tangible personal property or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits, or otherwise; and
 - ii) Any amount payable as additional rent or in lieu of rent such as interest, taxes, insurance, repairs, or other amounts required to be paid by the terms of a lease or other arrangement.
 - iii) A residence may not be considered an office unless a portion thereof is used exclusively for business purposes and to the extent such item is allocable to a portion of the dwelling unit which is exclusively used on a regular basis as the principal place of business for any trade or business of the taxpayer, as a place of business which is used by patients, clients, or customers in meeting or dealing with the taxpayer in the normal course of his trade or business, or in the case of a separate structure which is not attached to the dwelling unit, in connection with the taxpayer's trade or business.
 - C) The basis for allocation of the value of motor vehicles, as well as other mobile equipment is on the actual time used in the trade or business in generating the sales so reported in Step 3. If no records of the time the equipment is used in and out of the Municipality are available, the sales factor percentage is to be used as the determinant for mobile equipment in Step 1.

- B. STEP 2: Ascertain the percentage which the total wages, salaries, commissions and other compensation of employees within the Municipality is of the total wages, salaries, commissions and other compensation of all the taxpayer's employees within and without the Municipality during the period covered by the return.
- 1) Salaries and reasonable compensation paid owners or credited to the account of owners or partners during the period covered by the return are considered wages for the purpose of this computation.
 - 2) Wages, salaries, and other compensation shall be computed on the cash or accrual basis in accordance with the method of accounting used in the computation of the entire net income of the taxpayer.
 - 3) In the case of an employee who performs services both within and without the Municipality the amount treated as compensation for services performed within the Municipality shall be deemed to be:
 - A) In the case of an employee whose compensation depends directly on the volume of business secured by him, such as a salesman on a commission basis, the amount received by him for the business attributable to his efforts within the Municipality;
 - B) In the case of an employee whose compensation depends on other results achieved, the proportion of the total compensation received which the value of his services within the Municipality bears to the value of all his services; and
 - C) In the case of an employee compensated on a time basis, the proportion of the total amount received by him which his working time within the Municipality is of his total working time.
 - D) Provided, however, an employee regularly connected with or working out of a place of business maintained by his employer in the Municipality who performs 75 percent or more of his services within the Municipality shall be considered an employee within the Municipality. An employee regularly connected with or working out of a place of business maintained by his employer outside the Municipality who performs 25 percent or less of his services within the Municipality shall be considered an employee outside the Municipality. (The provisions of this subparagraph are not applicable in determining the tax liability of a non-resident who works in and outside the Municipality.)
- C. STEP 3: Ascertain the percentage which the gross receipts of the taxpayer derived from sales made and services rendered in the Municipality is of the total gross receipts wherever derived during the period covered by the return. The following shall be considered Municipality sales:
- 1) All sales made through retail stores located within the Municipality to purchasers within or without the Municipality except such sales to purchasers outside the Municipality that are directly attributable to regular solicitations made outside the Municipality personally by taxpayer's employees.

- 2) All sales of tangible personal property delivered to purchasers within the Municipality if shipped or delivered from an office, store, warehouse, factory, or place of storage located within the Municipality.
 - 3) All sales of tangible personal property delivered to purchasers within the Municipality even though transported from a point outside the Municipality if the taxpayer is regularly engaged through its own employees in the solicitation of sales within the Municipality and the sale is directly or indirectly the result of such solicitation.
 - 4) All sales of tangible personal property shipped from an office, store, warehouse, factory or place of storage within the Municipality to purchasers outside the Municipality if the taxpayer is not, through its own employees, regularly engaged in the solicitation of sales at the place of delivery.
 - 5) Charges for work done or services performed incident to a sale, whether or not included in the price of the property, shall be considered gross receipts from such sale.
- D. In the application of the foregoing sub-paragraphs of R7 C, a carrier shall be considered the agent of the seller, regardless of the FOB point or other conditions of the sale, and the place at which orders are accepted or contracts legally consummated shall be immaterial. Solicitation of customers outside the Municipality by mail or phone from an office or place of business within the Municipality shall not be considered a solicitation of sales outside the Municipality.
- E. STEP 4: Add the percentages determined in accordance with steps 1, 2, and 3 or such of the aforesaid percentages as may be applicable to the particular taxpayer's business and divide the total so obtained by the number of percentages used in ascertaining said total. The result so obtained is the business apportionment percentage. In determining the average percentage, a factor shall not be excluded from the computation merely because said factor is found to be allocable entirely in or outside the Municipality. A factor is excluded only when it does not exist anywhere.
- F. STEP 5: The business apportionment percentage determined in step 4 above shall be applied to the entire taxable net profits of the taxpayer wherever derived to determine the net profits apportioned to the Municipality.
- G. In the event a just and equitable result cannot be obtained under the business apportionment percentage formula, the tax commissioner may substitute other factors in the business apportionment percentage formula or prescribe other methods of apportioning net income calculated to effect a fair and proper apportionment.
- 1) Application to the tax commissioner to use other factors in the business apportionment percentage formula or to use a different method to apportion net profits shall be made in writing before the end of the tax year and shall state the specific grounds on which the substitution of factors or use of a different method is requested and the relief sought to be obtained. No specific form need be

followed in making such application. Once a taxpayer has filed under a substitute method, he must continue to so file until given permission to change by the tax commissioner.

- 2) In the case of businesses that own rental property located within the Municipality, permission is given to use separate books and records when the records accurately reflect the net profits from rental activity attributable to the Municipality.
- H. In the case of professional people and others furnishing personal services, if their only place of business is within the Municipality all their net profits shall prima facie be attributable to the Municipality.
- I. The tax imposed shall not apply to income derived from interstate commerce within the Municipality if the only business activities within the State of Ohio are either or both the following:
- 1) Solicitation of orders by such person, or his representative, in the State of Ohio for sales of tangible personal property, which orders are sent outside the State of Ohio for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside the State of Ohio; and
 - 2) The solicitation of orders by such person, or his representative in the State of Ohio, in the name of or for the benefit of a prospective customer of such person, if orders by such customer to such person to enable such customer to fill orders resulting from such solicitations are orders described in subsection 1) above; provided, however, that the provisions of this subsection shall not apply to any corporation which is incorporated under the laws of the State of Ohio or any individual who is domiciled in or a resident of the State of Ohio. For the purpose of this subsection a person shall not be considered to have engaged in a business activity within the State of Ohio during any taxable year merely by reason of sales in the State of Ohio, or the solicitation of orders for sales within the State of Ohio, of tangible personal property on behalf of such person by one or more independent contractors or by reason of the maintenance of an office within the State of Ohio by one or more independent contractors whose activities on behalf of such person in the State of Ohio consist solely of making sales or soliciting orders for sales of tangible personal property. For the purpose of this subsection the term "independent contractor" means a commission agent, broker, or other independent contractor who is engaged in selling or soliciting orders for sales of tangible personal property for more than one principal and who holds himself out as such in the regular course of his business activities. For the purpose of this subsection, the term "representative" does not include an independent contractor.

R9. OPERATING LOSS CARRY-FORWARD

- A. The same method of accounting and apportionment must be used in the year to which an operating loss is carried as was used in the year in which the operating loss was sustained. The tax commissioner may grant an exception in the event a taxpayer is required by law to change the method of apportionment.
- B. A short fiscal year (a fiscal year of less than 12 months) brought about by a change in accounting period, a new taxpayer selecting a short fiscal year, or a taxpayer operating in the Municipality for less than his full accounting period, shall be considered as a full taxable fiscal year for purposes of loss carry-forward.
- C. In any return in which a net operating loss deduction is claimed, a schedule must be attached showing:
 - 1) Year in which net operating loss was sustained.
 - 2) Method of accounting and apportionment used to determine portion of net operating loss allocable to the Municipality.
 - 3) Amount of net operating loss used as a deduction in prior years.
 - 4) Amount of net operating loss claimed as a deduction in current year.
- D. The net operating loss of a taxpayer that loses its identity through merger, consolidation, etc., shall not be allowed as a carry-forward loss deduction to the surviving or new taxpayer.
- E. With respect to a return combining taxable income from two or more sources, the following rules shall be applied:
 - 1) Losses from the operation of a business or profession are not deductible from employee earnings but may be carried forward as set forth in Section 311-9
 - 2) In the case of an individual a loss from the operation of a business or profession may be offset against net profits from other business or professional activities.
- F. Resident individuals are permitted to adjust their net operating loss carry-forward for taxes paid to other municipalities in cases where the taxpayer would normally receive a credit for these taxes under Section 311-73, except that the taxpayer's other business activities result in losses that offset all or part of their net profits. The adjustment is calculated by dividing the amount of the allowable unused tax credit by the Municipal tax rate. The allowable credit is limited to the amount of the net profit tax paid to other municipalities on sole proprietorship or pass-through entity income that is normally taxable to the Municipality at a tax rate not to exceed that of the Municipality. Taxes on qualifying wages paid to other municipalities are not includible in the adjustment.
- G. Losses from the operation of a farm, determined in accordance with accounting methods used by taxpayer for federal income tax purposes, shall be allowable as an offset to net profit as set forth herein.

R11. CONSOLIDATED RETURNS

- A. A consolidated return may be filed by a group of corporations who are affiliated through stock ownership if that affiliated group filed for the same tax period a consolidated return for federal income tax purposes pursuant to Section 1501 of the Internal Revenue Code. A consolidated return must include all companies that are so affiliated and that conduct business in the Municipality.
- B. To file a consolidated return for Municipal tax purposes the consolidated return shall include information to disclose the net profit or loss of each corporate member of the group before consolidation. Only those entities doing business in the Municipality shall be included in the consolidated return.
- C. The consolidated return must include the following:
 - 1) Separate income and expense statements for each entity included in the consolidation.
 - 2) Separate Schedule X for each entity.
 - 3) Separate Schedule Y apportionment for each entity.
- D. Profits and losses are combined after the schedules are separately applied to each respective corporation.
- E. Losses incurred by a corporation prior to the period of the consolidation year may be carried forward to the period of consolidation and applied against the allocated profit or loss of the same corporation, but such loss may not be used to reduce the income of other corporate members of the consolidated filing.
- F. Once a consolidated return has been filed for any taxable year the consolidated group must continue to file consolidated returns in subsequent years unless:
 - 1) Permission in writing is granted by the tax commissioner to file separate returns;
 - 2) A new corporation other than a corporation created or organized by a member of the group has become a member of the group during the taxable year; or
 - 3) A corporation member of the group is sold or exchanged. Liquidating a corporation or merging one of the corporations of the group into another will not qualify the group for filing separate returns.
- G. If the tax commissioner finds net profits are not properly allocated to the Municipality for any reason, including those set out in Section 311-11, he may then require the filing of separate returns or make such adjustments to the consolidated return as may be necessary to produce a fair and proper allocation.

R19. RETURNS MUST BE FILED; TIME OF FILING

- A. Due Dates. On or before April 15th of each year every person subject to the provisions of Chapter 311 shall, except as hereinafter provided, make and file with the tax commissioner a return on a form prescribed by and obtainable upon request from the Commissioner, whether or not a tax be due.
- 1) If the return is made for a fiscal year or any period less than a year, said return shall be made before the fifteenth (15th) day of the fourth (4th) month following the end of such fiscal year or period.
- B. Filing Requirement. Every person subject to the provisions of Chapter 311 shall, except as hereinafter provided, file a return setting forth the aggregate amount of qualifying wages, commissions and other personal service compensation, net profits from business or other activities, including the rental from use of real and personal property, and other income deemed taxable under Chapter 311, received for the period covered by the return, and such other pertinent facts and information in detail as the tax commissioner may require.
- 1) Where an employee's qualifying wages for the tax period are paid by an employer or employers, and the full tax thereon has in each instance been withheld and deducted by the employer or employers from the gross amount of the entire qualifying wages of such employee-taxpayer, and where the employer of such employee has filed a report or return in which such employee's entire and only qualifying wages are reported to the tax commissioner, and where such employee has no taxable income other than such qualifying wages and the tax so withheld has been paid to the Commissioner, such employee need not file a return.
 - 2) An employee who is permitted to deduct business expenses from qualifying wages or commissions must file a return in order to claim such deductions even though all or part of such qualifying wages or commissions are subject to withholding.
 - 3) Any taxpayer having income, qualifying wages, or other compensation for which a return must be filed, and also having net profits from a business, is required to file only one return.
 - 4) Trustees of active trusts are required to file returns and pay tax on the taxable income thereof.
 - 5) Any resident partner or resident member of a pass-through entity is required to make a return and pay the tax in accordance with R-5 D.2).
 - 6) The withholding tax return described in Section 311-32 of a pass-through entity that conducts business in Cincinnati, showing the amount of Municipal income tax withheld and remitted to the tax commissioner in respect of the owners' distributive shares shall be accepted as the Municipal income tax return for such

owner whose sole income subject to Municipal income tax consists of such distributive share.

- 7) A husband and wife may file a joint return either when engaged in the same or separate businesses, but may not deduct business losses of either from qualifying wages paid by an employer.
- 8) Executors and administrators are liable for the payment of any taxes due by a deceased from an estate of said deceased.

R21. FORMS FOR FILING

The Municipal income tax return filed hereunder shall set forth the aggregate amount of qualifying wages, adjusted federal taxable income and other taxable income earned or received during the year and subject to the Municipal income tax.

A. Supporting Documentation. The tax commissioner requires the submission of the following documents to verify that the figures used in the Municipal income tax return are the figures used for federal income tax, adjusted to set forth only such income as is taxable under the provisions of Chapter 311:

- 1) A copy of the first page of the applicable federal return. (*E.g.*, IRS Forms 1040, 1040A, 1065, 1120, 1120S)
 - A) The fact that any taxpayer is not required to file a federal income tax return does not relieve him from filing a Municipal return.
 - B) If a change in federal income tax liability, made by the Internal Revenue Service or by a judicial decision, results in an additional amount of tax payable to the Municipality, a report of such change shall be filed by the taxpayer within three months after receipt of the final notice from the Internal Revenue Service or final court decision.
- 2) A complete copy of Form W-2 or other acceptable wage statement issued by the individual's employer(s) that shows the amount of qualifying wages earned or received by the taxpayer during the tax year, the amount of Municipal tax withheld by the employer and the amount of other local taxes withheld by the employer.
- 3) Individuals shall submit copies of IRS Forms 1099 and federal schedules C, E, F, and K-1 to support other income. Other schedules such as Form 2106, Schedule A and detailed listings may be requested to support expense items deducted on the federal return.
- 4) Businesses shall submit complete copies of federal income tax and information returns.

B. Generic Form. The generic form must contain the following to be accepted as a valid Municipal income tax return:

- 1) Municipal account number.
- 2) Taxpayer's Social Security or federal identification number.
- 3) A reconciliation of Municipal taxable income with the Federal Income Tax return (City of Cincinnati Schedule X) and a business apportionment formula (City of Cincinnati Schedule Y) for business tax returns.
- 4) A space for validation of the income tax return measuring 1" by 3" located at the upper left hand corner.
- 5) A statement as follows: "I certify that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct and complete, and that the figures used herein are the same as for Federal Income Tax purposes."
- 6) All applicable federal schedules, forms, and statements.
- 7) Declarations of estimated tax must show Municipal tax withheld by employers, total income taxes paid to another municipality (if the taxpayer is a resident of the city of Cincinnati), total local tax payments and credits.
- 8) If the taxpayer has wages apportioned to the Municipality, reconciliation must be shown between wages apportioned on the Municipal income tax return and the Municipal annual wage return.

R23. EXTENSION OF TIME FOR FILING

- A. Requests shall set out the taxpayer's name and Municipal account number if an account number has been assigned, Social Security or Federal Identification number, the taxable period for which extension of time for filing is desired, the length of the extension and the reason therefore, and whether declaration filing and payment requirements have been fulfilled.
- B. Single requests by or for only one taxpayer may be in the form of a copy of the federal extension, a letter including the information described above, or an extension request form E-1 obtained at the Tax Division office or by mail request.
- C. An extension of time may not be granted for the filing of a declaration of estimated tax or withholding tax forms.

R31. COLLECTION AT SOURCE; WITHHOLDING

A. DUTY OF WITHHOLDING

- 1) It is the duty of each employer who employs one or more persons, whether as an employee, officer, director or otherwise, on a salary, wage, or other personal service compensation basis, to deduct each time any such compensation is paid, allocated or set aside to an employee the tax of 2.1% on such qualifying wages subject to the Municipal income tax paid by said employer to said employee. However, the tax commissioner shall have the authority to grant employers with only one resident employee permission for said employee to file individually. The tax shall be deducted by the employer from:
 - A) The gross amount of all salaries, wages, bonuses, incentive payments, fees, commissions and other forms of qualifying wages allocated, set aside, or paid to residents of the Municipality; and
 - B) All compensation allocated, set aside, or paid to nonresidents for services rendered, work performed or other activities engaged in within the Municipality.
 - C) An employer is liable for the payment of the tax required to be deducted and withheld, whether or not such tax in fact has been withheld.
- 2) All employers within or doing business within the Municipality are required to make the collections and deductions specified for residents of the Municipality whose services were performed outside the Municipality.
- 3) Employers who do not maintain a permanent office or place of business in the Municipality, but who are subject to tax on net profits attributable to the Municipality under the business apportionment percentage formula, are considered to be employers within the Municipality and subject to the requirements of withholding in respect of services performed by an employee(s) within the Municipality.
- 4) The mere fact that the tax is not withheld will not relieve the employee of the responsibility of filing a return and paying the tax on the compensation paid. If the employer has withheld the tax and failed to pay the tax withheld to the tax commissioner, the employee is not liable for the tax so withheld, unless the employee colluded with the employer not to remit the withheld tax.
- 5) Commissions and fees paid to professionals, brokers and others who are independent contractors, and not employees of the payor, are not subject to withholding or collection of the tax at the source. Such taxpayers must in all instances file a declaration and return and pay the tax.
- 6) Where a nonresident receives compensation for personal services rendered or performed partly within and partly without the Municipality, the withholding employer shall deduct, withhold and remit the tax on that portion of the

compensation which is earned within the Municipality in accordance with the following rules of apportionment:

- A) If an employer is located within the Municipality, all nonresident employees who report to the Municipal location are taxable to the Municipality unless the employer is withholding tax for other municipalities where the employee's work is performed.
- B) If the nonresident is a salesperson, agent or other employee whose compensation depends directly on the volume of business transacted or chiefly effected by the salesperson, the deducting and withholding shall attach to the portion of the entire compensation which the volume of business transacted or chiefly effected by the employee within the Municipality bears to the total volume of business transacted by him within and outside the Municipality.
- C) The deducting and withholding of personal service compensation of other nonresident employees, including officers of corporations, shall attach to the proportion of the personal service compensation of such employee which the total number of his working hours within the Municipality bears to the total number of all the employee's working hours.
- D) The fact that nonresident employees are subject to call at any time does not permit the apportionment of pay for time worked within the Municipality on a seven-day per week basis. The percentage of time worked within the Municipality will be computed on the basis of a 40-hour week unless the employer notifies the tax commissioner that a greater or lesser number of hours per week is worked.
- E) The determination of tax liability of nonresidents working in and out of the corporate limits of the Municipality is to be computed based on the formula of the total number of days worked in the Municipality divided by the total number of days worked during the year and the resulting percentage applied to the total annual income from wages, including sick leave and vacation pay. Where no record can be substantiated of the number of days worked, the figure 240 is to be used as the total number of days worked.
- F) The occasional entry into the Municipality of a nonresident employee who performs personal services on twelve or fewer days in a calendar year in the Municipality and performs the duties for which he is employed primarily outside the city, shall not be deemed to take such employee out of the class of those rendering their services entirely outside the Municipality unless one of the following applies:
 - i) The individual is an employee of another person; the principal place of business of the individual's employer is located in another municipal corporation in the state of Ohio that imposes a tax applying to compensation paid to the individual for services performed on those days in the Municipality; and the individual is not liable to that other municipal corporation for tax on the compensation paid for such services.
 - ii) The individual is a professional entertainer or professional athlete, the promoter of a professional entertainment or sports event, or an employee or such a promoter, all as may be reasonably defined by the Municipality.

- (1) In the case of employees of a professional athletic team who are nonresident members of the professional athletic team, the deduction and withholding of personal service compensation shall attach to the entire amount of wages, salaries and other compensation received for duty days that occur in the Municipality. To determine the Municipality-source income of a nonresident member of a professional athletic team not paid specifically for duty days, the following allocation formula must be used: The qualifying wages, earned and subject to tax is the total income earned during the taxable year, including incentive payments, signing bonuses, reporting bonuses, incentive bonuses, roster bonuses and other extras, multiplied by a fraction, the numerator of which is the number of duty days in the Municipality during the taxable year, and the denominator of which is the total number of duty days spent both within and without the Municipality during the taxable year.
- (2) Travel days that include a game, practice, meeting, promotional activity or other similar team event are considered duty days spent in the Municipality. Travel days involving no game, practice or required service will not be apportioned to the Municipality, but will be included in the total number of duty days.
- (3) For purposes of this section:
 - (i) The term "professional athletic team" includes, but is not limited to, any professional baseball, basketball, football, soccer or hockey team.
 - (ii) The term "member of a professional athletic team" shall include those employees who are active team members, team members on the disabled list and any other persons required to travel and who do travel with and perform services on behalf of a professional athletic team on a regular basis. This includes but is not limited to coaches, managers and trainers.
 - (iii) The term "duty days" shall mean all days during the taxable year from the beginning of the professional athletic team's official pre-season training period through the last game in which the team competes or is scheduled to compete.
 - (iv) Duty days shall also include days on which a member of a professional athletic team renders a service for a team on a date that does not fall within the aforementioned period (e.g., participation in instructional leagues, all-star exhibition games or promotional activities). In addition, duty days includes days during the off-season when a team member undertakes training activities as part of a team-imposed program, but only if conducted at the facilities of the team.
 - (v) Included within duty days shall be game days, practice days, days spent at team meetings, promotional activities and pre-season

training camps, and days served with the team through all post-season games in which the team competes or is scheduled to compete.

- (vi) Duty days for any person who joins a team during the season shall begin on the day such person joins the team, and for any person who leaves the team shall end on the day such person leaves the team. Where a person switches teams during a taxable year, a separate duty day calculation shall be made for the period such person was with each team.
 - (vii) Days for which a member of a professional athletic team is not compensated and is not rendering services for the team in any manner, including days when such member of a professional athletic team has been suspended without pay and prohibited from performing any services for the team, shall not be treated as duty days.
 - (viii) Days for which a member of a professional athletic team is on the disabled list and performing no services for the team shall be presumed not to be duty days spent in the Municipality. However, such days are considered to be included in total duty days spent both within and without the Municipality.
- (4) The term "total compensation for services rendered as a member of a professional athletic team" means the total compensation received during the taxable year for services rendered:
- (i) From the beginning of the official pre-season training period through the last game in which the team competes or is scheduled to compete during that taxable year; and
 - (ii) During the taxable year on a date which does not fall within the aforementioned period (e.g., participation in instructional leagues, all-star exhibition games or promotional activities). Such compensation shall include, but is not limited to, salaries, wages, bonuses as described in R31 A 5) F) ii) (1) and any other type of qualifying wages paid during the taxable year to a member of a professional athletic team for services performed in that year.
- (5) This section is designed to apportion to the Municipality, in a fair and equitable manner, the total compensation of a nonresident member of a professional athletic team for services rendered as a member of a professional athletic team. It is presumed that application of the foregoing provisions of this section will result in a fair and equitable apportionment of such compensation. Where it is demonstrated that the method provided under this section does not fairly and equitably apportion such compensation, the tax commissioner may require such member of a professional athletic team to apportion such compensation under such method as the tax commissioner prescribes,

as long as the prescribed method results in a fair and equitable apportionment. A nonresident member of a professional athletic team may submit a proposal for an alternative method to apportion such compensation, when it is demonstrated that the method provided under this section does not fairly and equitably apportion such compensation. If approved, the proposed method must be fully explained in the Municipal income tax return for the nonresident member of a professional athletic team.

iii) The income of nonresident entertainers is the entire amount received for performances, engagements or events that occur in the Municipality. In the case of a nonresident entertainer who is not paid specifically for a performance, the following allocation formula must be used: The income earned and subject to the tax is the total annual compensation multiplied by a fraction, the numerator of which is the number of performances the entertainer performed (or was available to perform, as, for example with understudies) in the Municipality, and the denominator of which is the total number of performances that the entertainer was obligated to perform under contract or otherwise during the taxable year.

(1) Any person who, acting as a promoter, booking agent or employer, engages the services of, or arranges the appearance of any entertainer, entertainment act, sports event, band, orchestra, rock group, or theatrical performance, in the Municipality, and who makes any payment arising from said appearance shall be deemed to be an employer and shall, for purposes of the collection of the income tax, be required to withhold, report and pay over to the tax commissioner the tax at the applicable rate, on the gross amount so paid on the completion of the engagement, said reports to be on forms provided by the tax commissioner;

(2) Any person who rents facilities to or for any entertainer, entertainment act, sports event, band, orchestra, rock group, or theatrical performance for use in performing services in the Municipality, and who makes any payment to those performers arising from said use of facilities, shall be deemed to be an employer and shall, for purposes of the collection of the income tax, be required to withhold, report and pay over to the tax commissioner the applicable tax at the rate hereof based on the gross amount so paid on completion of the engagement, said reports to be on forms provided by the tax commissioner.

(3) An entertainer, performer or performing entity may request that the base amount for withholding the Municipal income tax be reduced by the amount of ordinary and necessary business expenses directly associated with the event. The tax commissioner must receive the request for a reduction of withholding tax at least 30 days prior to the performance date. Prior to the performance date, the tax commissioner

will notify the performer and the withholding agent of the amount of allowable expenses to be deducted to arrive at the net income subject to withholding.

- (4) For the purposes of this regulation, an employer or agent of a nonresident entertainer will not be liable for payment of the tax unless the amount required to be deducted and withheld by the employer or agent for the Municipality on account of the employee exceeds \$50 for a calendar year.
- G) Wage continuation plans paid by the employer or third party agent on behalf of the employer for purpose of health, rest, recuperation, or other reward are deemed to have the same tax situs as the primary job assignment or job location of the employee and are taxable on the same ratio as the normal earnings of such employee for his primary job assignment.
- 7) An employer shall withhold the tax on the full amount of any advances made to an employee on account of commissions.
- 8) An employer required to withhold the tax on compensation paid to an employee shall, in determining the amount on which the tax is to be withheld, ignore any amount allowed and paid to the employee for expenses necessarily and actually incurred by the employee in the actual performance of his services, provided such expenses are incurred in earning compensation, including commissions, and are not deducted as business expense by the employee.
- 9) An employer whose records show that an employee is a nonresident of the Municipality and has no knowledge to the contrary, shall be relieved of the responsibility of withholding tax on personal service compensation paid to such employee for services rendered or work done outside the Municipality by such employee, provided, however, that such employer must withhold the tax on all personal service compensation paid such employee after the tax commissioner notifies said employer in writing that such employee is a resident of the Municipality. All employees are required to notify the employer of any change of residence and the date thereof.
- 10) An employer shall not be required to withhold the tax from the qualifying wages earned by a resident of the Municipality for work done or services performed in another municipality that imposes a tax upon such qualifying wages of such resident if such employer withholds the tax on such resident's qualifying wages for such other municipality. Except, where such municipal tax is for a smaller amount than the tax imposed by Chapter 311 of the Cincinnati Municipal Code, the employer shall withhold and remit the difference to the Municipality.

B. Return and Payment of Tax Withheld and Status of Employers

1) Paying Electronically

- A) Employers who are required by Section 311-31(d) to deposit payments electronically for the purposes of paying employee withholding taxes shall remit payroll taxes by one of the electronic filing programs deemed acceptable by the tax commissioner.
 - B) Exceptions to the electronic payment requirement may be requested from the tax commissioner by identifying the specific hardship that prohibits compliance.
- 2) Employers not required to remit deposits electronically must mail the payment to the address identified by the tax commissioner as the depository. Payments delivered to the offices of the Tax Commissioner will be considered received the date they are received by qualified personnel.

R33. EMPLOYER CONSIDERED AS TRUSTEE

- A. Every employer is deemed to be a trustee for the Municipality in collecting and holding the tax required to be withheld, and the funds so collected by such withholding are deemed to be trust funds.
- B. Every employer required to deduct and withhold the tax at the source is liable directly to the Municipality for payment of such tax whether actually collected from such employee or not.
 - 1) Prior to the issuance of Form W-2, if an overpayment of the amount of tax required to be deducted is withheld from the employee's pay the excess shall be refunded by the employer to the employee.
 - 2) If an over-withholding of tax is not discovered until the following year, the employee shall claim the overpayment by filing a return and providing an explanation of the circumstances causing the overpayment. Upon review and acceptance of the documentation submitted by the employee, the tax commissioner shall refund to the employee the amount of such excess withholding.
 - 3) If less than the amount of tax required is deducted and withheld by the employer in any pay period or periods, the employer must remit the additional payment. The deficiency may be deducted from the employee's wages in subsequent pay periods.

R37. WITHHOLDING RETURN; LIST OF EMPLOYEES

- A. On or before February 28th of each year, each employer shall file a withholding return (Form W-3) showing the sum total of all qualifying wages paid all employees subject to the withholding requirements defined in Section 311-31.
- 1) Said return shall include information concerning each employee from whom the Municipal tax was withheld, showing the name, address, zip code and Social Security number of each such employee.
 - 2) Said return shall also include the total amount of qualifying wages paid during the year to each employee, the portion of qualifying wages subject to the Municipal withholding requirements and the amount of Municipal tax withheld.
 - A) The tax withheld for the Municipality must be indicated as Cincinnati, and the words various, local, etc., will not be acceptable in lieu of the word Cincinnati.
 - B) The amount of the tax withheld for other municipalities or localities shall be separately shown on the return for each employee.
 - 3) For employers not required to file electronically, the return of information concerning individual employees may be a legible copy of a commercially produced Form W-2. Typed, printed or mechanically produced listings are acceptable provided all required employee information is provided.
- B. Employers who are required to submit IRS Form W-2 information electronically for federal tax purposes are required by the Municipality to submit the information in electronic format.
- 1) Employers shall provide the information in utilizing the electronic format described in the Magnetic Media Guide posted on the Municipality's website and available upon request from the tax commissioner.

R53. DUTIES OF THE TAX COMMISSIONER

A. Enforcement Provisions.

- 1) The tax commissioner is authorized to arrange for the payment of taxes, interest and penalties on a schedule of installment payments when the taxpayer has proven to the commissioner that, due to certain hardship conditions, he is unable to pay the full amount due. Such authorization shall not be granted until the taxpayer files acceptable returns for all amounts owed.
- 2) Failure to make any deferred payment when due shall cause the total amount unpaid, including penalty and interest, to become payable on demand.

- 3) Any taxpayer or employer desiring a special ruling on any matter pertaining to Chapter 311 of these Rules and Regulations should submit to the tax commissioner in writing all the facts pertinent to the matter on which the ruling is sought.

B. Estimation of Tax.

- 1) Whenever the tax commissioner has been unable to secure information from the taxpayer as to his or her taxable income for any year, the tax commissioner may determine the amount of tax appearing to be due and assess the taxpayer upon the basis of such determination, together with the interest and penalties.
- 2) Such determination of tax may be adjusted upon the timely submission by the taxpayer of actual records from which the tax may be computed.

R55. INVESTIGATIVE POWERS OF THE TAX COMMISSIONER

- A. An employer, or supposed employer, and every taxpayer shall furnish, within 10 days following a request by the Commissioner, or his duly authorized agent, the means, facilities and opportunity for making examinations and investigations authorized by Section 311-55.

- B. **SUBPOENA OF RECORDS AND PERSONS.** The tax commissioner or any person acting in his capacity is authorized to examine any person under oath concerning any income which was, or should have been, returned for taxation, or any transaction tending to affect such income. The commissioner may compel the production of books, papers and records and the attendance of all persons before him, whether as parties or witnesses, whenever he believes such persons have knowledge of the facts concerning any supposed income or supposed transaction of the taxpayer.

- 1) The tax commissioner may order the appearance before him, or his duly authorized agent, of any party whom he believes to have any knowledge of a taxpayer's income or withholdings or any information pertaining to the taxpayer under investigation, whether or not the individual so ordered has actual custody of the records of the taxpayer being investigated. The commissioner is specifically authorized to order the appearance of the local manager or representative of any taxpayer.
- 2) Persons required to attend any hearings shall be notified not less than five days prior to the time of the hearing. The notice shall show the time and place of the hearing and what books, papers or records the witness is to make available at such hearing.
- 3) The tax commissioner or his duly authorized agent shall serve this notice by personal delivery to the person named or by leaving the notice or mailing it to his usual place of business or residence.

R63. INTEREST AND CIVIL PENALTIES

A. Underpayment of Estimated Tax. Failure to have paid the required Municipal income tax liability by estimate in the fashion described in Section 311-63 shall subject the taxpayer to interest and penalties as set forth in Section 311-63.

- 1) There can be no assessment for the underpayment of estimated tax for resident individuals that were not domiciled in the Municipality prior to January 1 of the taxable year.
- 2) The interest and penalty assessment for underpayment of estimated tax is based on the lesser of the two methods of determining the total estimated tax described in Section 311-45.
- 3) Payments will be applied as follows:
 - A) Overpayments from prior years will be considered as payments made on the original due date of the return creating the overpayment provided the return was timely filed, including extensions, and the payments were received before the original due date of the return.
 - B) Overpayments not meeting the criteria set forth above will be credited on the received date of the return creating the overpayment.
 - C) Taxes withheld and remitted by the employer are normally considered paid evenly throughout the year.

B. Additional Tax Assessments.

- 1) Adjusted Return. No penalty will be assessed on the additional tax assessment made by the tax commissioner when the Municipal tax return was timely received and the additional tax and interest is paid within thirty (30) days of the tax commissioner's notice of adjustment.
- 2) Federal Adjustment. No interest or penalty will be assessed on the additional tax assessment paid within three (3) months from the final determination of any federal tax liability.

C. Appeals. A taxpayer shall have thirty (30) days after announcement of notice of any proposed imposition of interest and penalty within which to file a protest or explanation with the tax commissioner.

- 1) If no protest or explanation is filed within the time prescribed, the proposed imposition of interest and penalty shall be updated and shall become and be the final assessment.
- 2) Upon filing of a written protest or explanation, the tax commissioner shall determine the final assessment. For good cause shown by the taxpayer, the tax commissioner may recommend that the director of finance abate interest or penalty.

R69. BOARD OF REVIEW

Any person dissatisfied with any ruling of the tax commissioner that is made under the authority conferred by this Chapter may appeal to the Board of Review within thirty (30) days after the date of the tax commissioner's ruling.

A. Format of Appeal.

- 1) Such appeals setting forth the taxpayer's case shall be in writing.
- 2) Requests shall be mailed or personally delivered to the Board of Review, Cincinnati Income Tax Division, 805 Central Avenue, Suite 600, Cincinnati, Ohio 45202.